

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

NESTLÉ PURINA PETCARE COMPANY,)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
THE BLUE BUFFALO COMPANY LTD.,)	JURY TRIAL DEMANDED
)	
Defendant.)	

COMPLAINT

Plaintiff, Nestlé Purina PetCare Company (“Purina”), for its complaint against defendant The Blue Buffalo Company Ltd. (“Blue Buffalo” or “Defendant”), alleges and states as follows:

NATURE OF ACTION

1. This is an action for false advertising, commercial disparagement, and unjust enrichment arising from defendant Blue Buffalo’s pattern of false and deceptive advertising. With tens of millions of dollars in advertising and a small army of in-store marketers, Blue Buffalo has built a brand targeted at ingredient-conscious pet owners. It has become increasingly clear, however, that Blue Buffalo’s brand is built instead on a platform of dishonesty and deception. Testing from an independent laboratory reveals that Blue Buffalo is falsely promoting its pet food as containing “NO Chicken/Poultry By-Product Meals” when, in fact, Blue Buffalo pet food contains significant amounts of chicken/poultry by-product meals. Contrary to Blue Buffalo’s so-called “True Blue Promise,” many Blue Buffalo products also contain corn, other grains, and artificial preservatives when they promise otherwise. In short, Blue Buffalo is not being honest with consumers about the true ingredients of Blue Buffalo products.

2. Spending roughly \$50 million per year on advertising, Blue Buffalo puts heavy emphasis on its ingredient and nutritional claims throughout its website, product packaging, advertisements, and other like promotional materials. Despite Blue Buffalo's massive marketing barrage, Purina has discovered that Blue Buffalo—and not the “big name” pet food manufacturers Blue Buffalo routinely criticizes in its advertising—is concealing the truth about the ingredients in its products. Investigation and scientific testing by an independent laboratory completed in April 2014 reveals as follows:

Blue Buffalo Product Claimed to Contain No Poultry By-Products	Percentage Poultry By-Product Meal in Kibble (Two Samples)	Percentage Poultry By-Product Meal in LifeSource Bits (Two Samples)
Life Protection Indoor Health Chicken & Brown Rice Recipe	25%, 24%	2%, 2%
Life Protection Adult Chicken & Brown Rice Dog Food	22%, 0%	
Wilderness Adult Chicken Recipe Dog Food		9%, 11%
Wilderness Adult Chicken Recipe Cat Food		8%, 5%
Longevity for Adult Cats		3%, 0%
Freedom Adult Grain Free Chicken Dog Food		2%, 2%
Basics Adult Turkey & Potato Cat Food		2%, 2%
Freedom Grain-Free Chicken for Indoor Cats		2%, 1%
Longevity for Adult Dogs		2%, 1%

Testing was also conducted for the presence of rice and corn, with the following results:

Blue Buffalo Product Claimed to Contain No Grains	Percentage Rice and/or Corn in Kibble (Two Samples)	Percentage Rice and/or Corn in LifeSource Bits (Two Samples)
Wilderness Adult Chicken Recipe Cat Food	0%, 1%	2.2%, 2.5%
Freedom Adult Grain Free Chicken Dog Food		3%, 1%
Wilderness Adult Chicken Recipe Dog Food		2.2%, 1.5%
Freedom Grain-Free Chicken for Indoor Cats		2%, 2%

Testing was conducted using samples of multiple formulas of Blue Buffalo pet food purchased at retail stores on both the East and West Coasts. Remarkably, for some Blue Buffalo products, chicken/poultry by-product meals comprise upwards of 20% of the product by weight, despite the “NO Chicken Poultry By-Product Meals” wording on the label.

3. Fundamental to Blue Buffalo’s marketing are categorical assertions that Blue Buffalo products are allegedly superior to competitor brands because Blue Buffalo products are free from these ingredients. Through Blue Buffalo’s advertising and promotional efforts in which it advocates its products as made with “only the finest natural ingredients” and free from “less than desirable” ingredients such as chicken/poultry by-product meals, corn, and preservatives, Blue Buffalo has become a pet food brand that consumers have come to associate—falsely—with very high, “ultra-premium healthy” pet food. To make matters worse, Blue Buffalo charges very high “ultra-premium” prices based on the same false attributes. Blue Buffalo’s products are significantly more expensive than the pet food products they use for comparison purposes on their website.

4. Purina is not alone in exposing Blue Buffalo’s lack of honesty with consumers. Purina brings this lawsuit in the wake of an investigation and recent ruling of the National

Advertising Division (NAD) of the Council of Better Business Bureaus that Blue Buffalo is engaging in misleading advertising practices. At the conclusion of a process where Blue Buffalo had the opportunity to submit substantiation for its advertising claims, the NAD concluded in a detailed written decision: “[Blue Buffalo] has not provided any evidence that ‘big name’ pet food manufacturers ... are actively concealing the truth about the ingredients in their products.” (NAD Case #5696, decided March 11, 2014, attached hereto as Exhibit A, hereinafter “NAD Ruling”).

5. Consequently, Blue Buffalo is misleading consumers not only about the ingredients in its own products, but also about the ingredients in competing products. In the NAD Ruling, the NAD sharply criticized Blue Buffalo’s advertising tactics and recommended that Blue Buffalo correct its television commercials by removing all of its unsupported allegations that Blue Buffalo’s competitors are misleading consumers. (*Id.* at 8-10, 14).

6. The NAD also instructed Blue Buffalo to overhaul its “True Blue Test,” which Blue Buffalo offers on its website as a comparison tool for consumers to use to compare certain characteristics of Blue Buffalo’s products versus those of competitors (including Purina products). The NAD determined, among other things, that: (a) Blue Buffalo was guilty of making sweeping allegations about the ingredient content of all products offered by certain competitors, when in fact such statements may only be true for a fraction of those competitors’ product offerings; and (b) the information displayed about competitor products was not always current. (*Id.* at 11-4). Blue Buffalo preaches a message of truth, but is not practicing it.

7. Blue Buffalo’s behavior is unlawful and just plain wrong. Through this legal action, Purina seeks to halt Blue Buffalo’s pattern of false advertising and consumer deception.

THE PARTIES

8. Plaintiff Purina is a leading pet food and nutrition company with a rich history spanning over 85 years. Purina makes and sells pet food, treats, and related products in the United States and worldwide in grocery stores, mass merchandisers, pet stores, and online. Purina is a Missouri corporation with headquarters at 901 Chouteau Avenue, St. Louis, Missouri 63102.

9. On information and belief, Defendant Blue Buffalo is a Delaware corporation with headquarters at 444 Danbury Road, Wilton, Connecticut 06897. Blue Buffalo is in the business of marketing and selling pet food, pet treats, and related products.

JURISDICTION AND VENUE

10. This is an action for false advertising and arises under the Trademark Act of 1946, 15 U.S.C. § 1051, *et seq.* (“Lanham Act”) and the common law of the State of Missouri.

11. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338. This Court has supplemental jurisdiction over the related state and common law claims pursuant to 28 U.S.C. §§ 1338(b) and 1367(a). This Court also has subject matter jurisdiction on the separate and independent ground of diversity of citizenship pursuant to 28 U.S.C. § 1332(a). The parties are citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

12. This Court has personal jurisdiction over Blue Buffalo pursuant to Missouri Revised Statute § 506.500 because Blue Buffalo advertises and sells its products to retailers and consumers in Missouri. Upon information and belief, Blue Buffalo and its agents have prepared, disseminated, made available or broadcasted television commercials, in-person promotions, print advertisements, Internet advertisements and related materials, all of which are at issue here, in this District. On information and belief, Blue Buffalo employs “pet detectives” in Missouri to

promote sales of Blue Buffalo products to consumers in various retail outlets in Missouri. Additionally, Blue Buffalo is presently building a factory in Joplin, Missouri, and is actively recruiting employees to work in this factory. Blue Buffalo maintains a registered agent for service of process in Missouri.

13. Venue is proper in this District under § 1391(b)(2) and (c) because a substantial part of the events or omissions giving rise to this action have occurred and/or will occur within this District, and the Defendant resides in this District.

BLUE BUFFALO'S FALSE AND MISLEADING ADVERTISING ACTIVITIES

14. Blue Buffalo's product promotion strategy is centered around its ingredient claims and promises, and the value of its brand is dependent on such claims. Nutritional and ingredient claims pervade Blue Buffalo's website, its product packaging, its print ads, its television ads and other like advertising materials. As a consequence of and in reliance on these claims, retailers and consumers are willing to pay and have paid a substantial price premium for Blue Buffalo products.

15. Blue Buffalo's false advertising statements have had wide consumer reach. On information and belief, Blue Buffalo spent over \$50 million on advertising in 2013 comprised of a wide array of national print, television, and Internet ads. On information and belief, Blue Buffalo is poised to spend another \$50 million or more on advertising in 2014. Many of these advertisements include statements that are materially false and misleading, and were made with the specific intent to persuade consumers to purchase Blue Buffalo products. Consumers have relied on these false and misleading statements in making their decisions to purchase Blue Buffalo products.

“NO Chicken/Poultry By-Product Meals”

16. Blue Buffalo advertises a “so-called TRUE BLUE PROMISE” claiming unequivocally that its products contain “NO chicken/poultry by-product meals:”



Source: Blue Buffalo website 4/22/2014

In addition to its website, Blue Buffalo places the “True Blue Promise” on every label of its products. Additionally, Blue Buffalo’s sales employees verbally communicate this promise to consumers on site at pet stores. The “True Blue Promise” is false because Blue Buffalo products actually contain chicken/poultry by-product meals and other ingredients, contrary to the “promise.”

17. Blue Buffalo tries to boost the credibility of its advertising through more detailed explanations and “Q&A” segments on its website:

What's Not In BLUE and Why

While the high-quality ingredients we include in BLUE are the foundation of our healthy, holistic diet, what we choose not to include is of equal importance.

There are many ingredients that are considered less than desirable by pet parents who want to feed their dog or cat with the same care as a family member. Surprisingly, when you look at dog food and cat food labels, you'll see some of these ingredients in many of the leading pet food brands – but not in BLUE.

Chicken or Poultry By-Product Meals

The definition of Poultry By-Product Meals, as stated in the AAFCO (Association of American Feed Control Officials) Publication 2009 reads, "Poultry (Chicken) By-Product Meal consists of the ground, rendered, clean parts of the carcass of slaughtered poultry, such as necks, feet, undeveloped eggs and intestines, exclusive of feathers, except in such amounts as might occur unavoidably in good processing practices. If the product bears a name descriptive of its kind (i.e. "Chicken By-Product Meal") the name must correspond thereto."

At Blue Buffalo we use "Chicken Meal" or "Turkey Meal" made from the whole meat of the birds, not by-products. Poultry or chicken by-product meals cost a lot less than meals made from whole meat. At Blue Buffalo we think the cost is well worth it to know exactly what's in our food.

Source: Blue Buffalo website 4/22/2014

Does BLUE dog food or BLUE cat food contain chicken or poultry by-product meals?

BLUE pet food contains no chicken or poultry by-product meals. What's more, we do not use corn, wheat or soy in any of our recipes.

Source: Blue Buffalo website 4/22/2014

18. Blue Buffalo's statements that its products contain "NO chicken/poultry by-product meals" and its attempt to differentiate Blue Buffalo products from competing brands are false because Blue Buffalo's products actually contain a significant amount of chicken/poultry by-product meals. In short, Blue Buffalo has broken its "True Blue Promise" to consumers. For example, Blue Buffalo attempts to differentiate its products from "many of the leading pet food brands" by contending that Blue Buffalo products do not contain "ingredients . . . considered less than desirable by pet parents" such as "chicken or poultry by-product meals." This is false.

19. Purina engaged an independent laboratory to conduct testing to determine the ingredient makeup of a number of Blue Buffalo products. The scientific testing revealed that, contrary to Blue Buffalo's representations to consumers that its products do not contain

chicken/poultry by-product meals, Blue Buffalo's products actually do contain a substantial percentage of chicken/poultry by-product meals—not trace amounts. Indeed, the testing revealed that chicken/poultry by-product meals were the most prevalent ingredient and comprised upwards of 20% of the product by weight of some of the tested Blue Buffalo products.

“Superior Nutrition”

20. Blue Buffalo makes statements that consumers should “Choose BLUE” because its products allegedly provide pets with “superior nutrition” as compared to those of competitor products. Blue Buffalo's “superior nutrition” claims are premised in part on its assertions that its products do not contain certain ingredients such as chicken/poultry by-product meals.

Why Choose BLUE?

Because only BLUE is made with the unique combination of high-quality, natural ingredients plus exclusive LifeSource® Bits.

We love our dogs and cats like family so we want to feed them with the same care as family. That's why BLUE™ is made with only the finest natural ingredients plus the active nutrients and antioxidants of our exclusive, cold-formed LifeSource® Bits.



The Finest Natural Ingredients for Superior Nutrition

All of our great-tasting, natural and holistic BLUE dog food and BLUE cat food recipes feature:

- Deboned chicken, lamb or fish is the **FIRST** ingredient
- Wholesome whole grains
- Garden vegetables and antioxidant-rich fruit



Our Exclusive LifeSource Bits, Now Enhanced with Super 7 Antioxidants

All BLUE dog and cat dry foods contain LifeSource Bits, a precise blend of vitamins, minerals and antioxidants selected by holistic veterinarians and animal nutritionists. And now we've enhanced LifeSource Bits in **our BLUE Life Protection Formula for dogs and BLUE for Cats dry food** with our Super 7 package of powerful antioxidant-rich ingredients. "Cold-formed" to retain their potency, the ingredients in LifeSource Bits support:

- Immune system health
- Life stage requirements
- Healthy oxidative balance

[LEARN MORE](#)



TRUE BLUE PROMISE

Only the Finest Natural Ingredients

- **REAL MEAT** First Ingredient
- **NO** Chicken/Poultry By-Product Meals
- **NO** Corn, Wheat or Soy
- **NO** Artificial Preservatives, Colors or Flavors

BLUE uses only the finest natural ingredients and:

- **NO** chicken (or poultry) by-product meals
- **NO** artificial flavors, colors, or preservatives
- **NO** corn, wheat or soy, as they have been linked to allergic reactions in some pets

Source: Blue Buffalo website 4/22/2014

21. Blue Buffalo's "superior nutrition" claims were sharply criticized in the recent NAD decision. Particularly, the NAD concluded:

"[Blue Buffalo] has not provided any evidence that 'big name' pet food manufacturers ... are actively concealing the truth about the ingredients in their products."

* * *

"[Blue Buffalo] has not provided any evidence that meat by-product meal is *not* a high quality ingredient or that it is not nutritious, or that products which include meat by-product meal are less nutritious than BLUE's or similarly positioned products that do not."

(NAD Ruling at 10). In its criticism of Blue Buffalo's efforts to disparage the nutritional value of by-product meals, the NAD also explained that "[i]n fact, NAD has noted in prior decisions involving advertising for pet foods that chicken by-product meals are nutritious." (*Id.*). In support of its finding that Blue Buffalo's statements alleging "superior" nutrition were false and baseless, the NAD explained:

"some dogs and cats have allergies or sensitive stomachs which preclude eating foods which include meat, and no allowance is made for products designed for pets with dietary restrictions in any of the challenged advertisements."

(*Id.*).

22. Blue Buffalo's statements that its products are nutritionally superior to those of competitors are false because, as found by the NAD, there is no evidence that Blue Buffalo's products are any more nutritious than similarly positioned competitive products. Indeed, Blue Buffalo cannot distinguish its products as allegedly "superior" over competitive products for not having chicken/poultry by-product meals as the testing reveals that its products contain this precise ingredient.

Comparative Advertising

23. Blue Buffalo's advertising features comparisons between Blue Buffalo products and those of its competitors, which represents and sends a message to consumers that Blue Buffalo's products contain better ingredients and that Blue Buffalo is, unlike its competitors, honest about the ingredients that it uses. Blue Buffalo even offers to give consumers information about "How [] some brands categorize certain ingredients to make their food appear healthier," falsely implying that Blue Buffalo is honest and does not engage in such tactics.



Source: Blue Buffalo website 4/22/2014

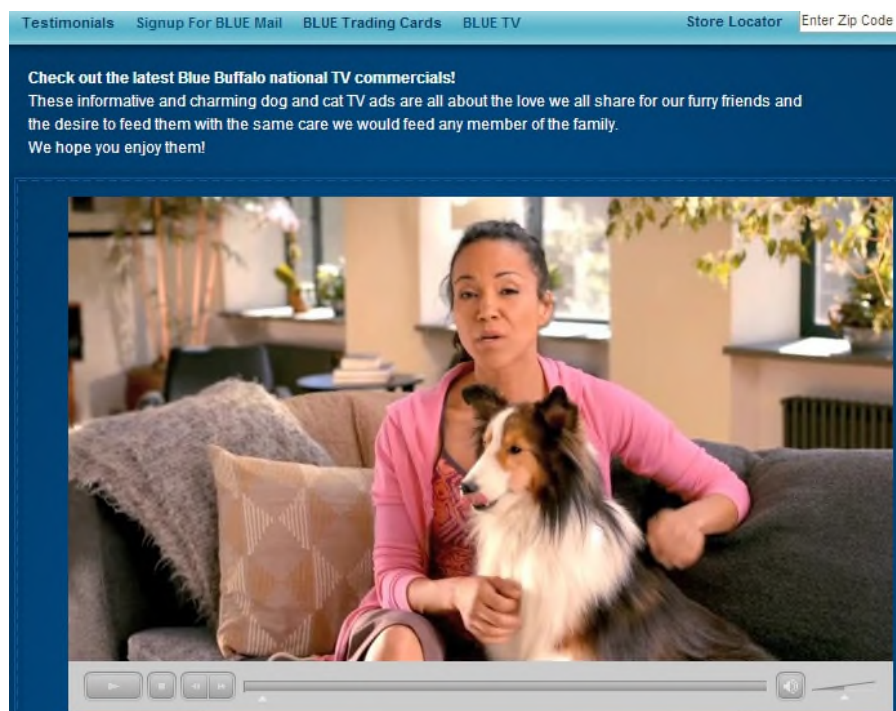
24. Blue Buffalo has aired and continues to air nationally-televised commercials featuring pet owners who allegedly "switch to Blue Buffalo" after learning the "truth about big name dog foods." For example, one of Blue Buffalo's commercials states verbatim:

When pet parents learn the truth about big name dog foods, they switch to Blue Buffalo. All Blue Life Protection foods are made with real meat first, plus wholesome whole grains, veggies and fruit.

I didn't know how my dog's big name food stacked up, so I went to Blue's website, and I took the True Blue Test. It was clear, Blue had everything that I wanted and none of the stuff I didn't want.

Only Blue has LifeSource Bits. A precise blend of beneficial nutrients. And now we've enhanced LifeSource Bits with powerful antioxidant rich ingredients, including pomegranate, pumpkin, spinach, apples, blackberries, blueberries and cranberries. We call it our Super 7 package. When you love them like family, you want to feed them like family. That's why I feed him Blue. With Super 7 Life Source Bits, Blue is better than ever. **Take the TrueBlue Test today, and see how your dog's food compares to Blue.**

(Blue Buffalo website: <http://www.bluebuffalo.com/tv-commercials>) (emphasis added).



Source: Blue Buffalo website 4/22/2014; "BLUE Dog Food" commercial

25. Blue Buffalo even has a staff of salespeople who dress similarly to pet store employees and approach consumers in pet store parking lots (such as PetSmart®) to inform consumers of the quality of Blue Buffalo's products as compared to competitive products, including the falsehood that Blue Buffalo's products do not contain any chicken/poultry by-product meals and that Blue Buffalo honors the "True Blue Promise."

26. To help misleadingly differentiate itself from other competing brands, Blue Buffalo offers through its website what it has coined the “True Blue Test,” which allows consumers to compare the alleged ingredient contents of Blue Buffalo’s products with those of other leading brands, including those of Purina. (*See, e.g., Exhibit D*). Among other claims, the “True Blue Test” falsely advocates that Blue Buffalo’s products “NEVER Has Chicken (or Poultry) By-Product Meals” and identifies competing leading brands that, by Blue Buffalo’s assessment, do. (*See, e.g., id.*). These statements are materially false because Blue Buffalo products, as tested, contain chicken/poultry by-product meals—in significant amounts. Further, many Blue Buffalo products contain corn and artificial preservatives, also directly contrary to the representation that Blue Buffalo products “NEVER” contain these ingredients.

THE TRUE BLUE TEST RESULTS
Love Them Like Family. Feed Them Like Family.

How does your brand compare? [Learn More](#)

Roll over or touch to expand

	ALWAYS Has Real Meat as the First Ingredient Learn More	ALWAYS Includes Veggies and Fruit Learn More	NEVER Has Chicken (or Poultry) By-Product Meals Learn More	NEVER Has Artificial Colors, Flavors or Preservatives Learn More	NEVER Has Corn, Wheat or Soy Learn More
BLUE	✓	✓	✓	✓	✓
Beneful	—	—	—	—	—
Bil-Jac	—	—	—	✓	—
Eagle Pack	—	—	✓	✓	—
Eukanuba	—	—	—	✓	—
IAMS	—	✓	—	✓	—

Save on BLUE dog food and treats! Scroll down to learn more.

Source: Blue Buffalo website 4/22/2014

27. Consumers of pet food and related products are becoming increasingly ingredient conscious and are being more particular than ever about the types of foods that they feed their pets. Indeed, consumers rely on ingredient claims and other statements about nutritional value and food quality when deciding the brand of food to feed their pets. Many consumers have

chosen to purchase—and pay a substantial premium for—Blue Buffalo brand products over other leading brands because of the false nutritional statements and promises made by Blue Buffalo, including, for example, false statements that its products: (i) do not contain chicken/poultry by-product meals; and (ii) contain “none” of the ingredients that ingredient-conscious consumers would not want; when in fact, Blue Buffalo’s products contain chicken by-product meals and other ingredients that Blue Buffalo itself advocates ingredient-conscious consumers should not want.

LifeSource Bits

28. Blue Buffalo has created what it calls “LifeSource Bits” that it represents as being “vitamins, minerals and antioxidants” that are allegedly “cold-formed” pieces of kibble included in its pet food. Blue Buffalo touts its LifeSource Bits as offering a series of special health benefits for pets.

The benefits of LifeSource Bits you find in every BLUE dry dog or cat food.

Cold-formed to retain their potency, BLUE LifeSource Bits are a precise blend of vitamins, minerals and antioxidants that are formulated to help support:

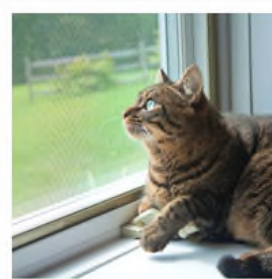
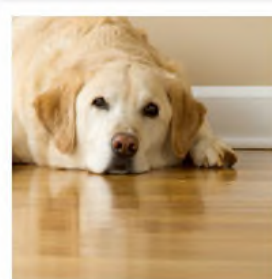
- Healthy oxidative balance
- Immune system health
- Life stage requirements

Help dogs and cats maintain a healthy oxidative balance

Virtually every day, our dogs and cats are exposed to environmental factors that can negatively impact their oxidative balance. And if their biological systems are not able to rebalance this oxidative stress, it can lead to cellular destruction and other serious health issues.

As antioxidants can play an important role in reducing oxidative stress, an increasing number of veterinarians are recognizing their importance in helping pets maintain a healthy oxidative balance. This is the science that led our nutritionists to formulate BLUE’s LifeSource Bits with ingredients that are rich in antioxidants. These include:

- Kelp
- Vitamin E
- Vitamin C
- Beta Carotene
- Vitamin A
- Blueberries



Source: Blue Buffalo website 4/22/2014

29. In actuality, Blue Buffalo's "LifeSource Bits" do not contain enough nutrients to effectively deliver the claimed health benefits. Contrary to the "TRUE BLUE PROMISE," laboratory testing reveals that Blue Buffalo "LifeSource Bits" also contain chicken/poultry by-product meal and corn. LifeSource Bits in several of Blue Buffalo's "grain free" products contain rice hulls (which, of course, do not belong in a "grain free" product).

30. Likewise, Blue Buffalo falsely implies that its LifeSource Bits are superior in nutritional quality to vitamins, minerals, antioxidants and other ingredients included in other competing pet food products. For example, Blue Buffalo includes LifeSource Bits on the results page of its "True Blue Test," advertising LifeSource Bits as one of the qualities that allegedly makes Blue Buffalo's products superior to those of competitors without acknowledging that its competitors products may and/or do contain similar ingredients.

THE TRUE BLUE TEST RESULTS

Love Them Like Family. Feed Them Like Family.

How does your brand compare? [Learn More](#)

Roll over or touch to expand

	ALWAYS Has Real Meat as the First Ingredient Learn More	ALWAYS Includes Veggies and Fruit Learn More	NEVER Has Chicken (or Poultry) By-Product Meals Learn More	NEVER Has Artificial Colors, Flavors or Preservatives Learn More	NEVER Has Corn, Wheat or Soy Learn More
BLUE	✓	✓	✓	✓	✓
Beneful	—	—	—	—	—
Bil-Jac	—	—	—	✓	—
Eagle Pack	—	—	✓	✓	—
Eukanuba	—	—	—	✓	—
IAMS	—	✓	—	✓	—
Nutro MAX	—	—	✓	✓	—
Natural Choice	—	—	✓	✓	—
Pedigree	—	—	—	—	—
HAPPY	—	—	—	—	—
Dog Chow	—	—	—	—	—
ONE	✓	—	—	✓	—
PRO PLAN	—	—	—	✓	—
ROYAL CANIN	—	—	✓	✓	—
SCIENCE DIET	—	—	✓	✓	—

For detailed comparison information, [click here](#)

Take the True BLUE Test for Cats. [Click Here](#)

Want to re-take the test? [Click Here](#)

Are you surprised by the results?

Trying to choose the best dog food for Milton isn't easy—especially when there are so many pet food companies trying to get your attention with pretty packaging and heartfelt commercials.

The goal of the True BLUE Test is to give you a better understanding of what really makes up a high-quality dog food. And as the results show, many leading brands probably fall short of what you should expect from your dog's food.

Only BLUE Has LifeSource® Bits, Now Enhanced with Super 7 Antioxidants

LifeSource Bits contain a precise blend of vitamins, minerals and antioxidants selected by holistic veterinarians and animal nutritionists. And now all BLUE Life Protection Formula dog foods feature LifeSource Bits that have been enhanced with our Super 7 package of powerful antioxidant-rich ingredients:

- Apples
- Blackberries
- Blueberries
- Cherries
- Pomegranates
- Pumpkins
- Spinach

The ingredients in LifeSource Bits help support:

- Immune system health
- Life stage requirements
- Healthy oxidative balance

Get \$5 off BLUE dog food, plus savings on treats & more!

[Get my coupons](#)

Source: Blue Buffalo website 4/22/2014

31. Once again, in actuality, the low level of nutrients in Blue Buffalo's "LifeSource Bits" do not render them superior to competing products.

32. Blue Buffalo also makes false and misleading statements implying that the "cold formed" process that it purportedly uses to create its LifeSource Bits is the only way to preserve the vitamins, minerals, antioxidants and enzymes contained in pet food and falsely asserts that its

competitors do not take steps to similarly preserve the nutritional qualities of their products. Blue Buffalo also makes statements that “other manufacturers process their foods with heat as high as 350° . . . [which] “can destroy the potency of many vitamins, minerals, antioxidants and important enzymes,” while failing to disclose the reason why foods are processed with heat (*e.g.*, to kill harmful bacteria) and that, in fact, most of Blue Buffalo’s products are processed using the same high heat methods. (*See, e.g., id.*).

“Cold-Formed” Process

Recognized as a breakthrough in canine and feline health because of the multiple benefits they provide, LifeSource Bits are also a manufacturing breakthrough because they are “cold-formed” to preserve nutritional potency of the ingredients. BLUE is the ONLY brand of pet food to use this “cold-formed” process.

When you compare dog foods or compare cat foods, you will see that this “cold-formed” process is an important difference between BLUE and other brands that add antioxidants and vitamins. Other manufacturers process their foods with heat as high as 350°. High heat can destroy the potency of many vitamins, minerals, antioxidants and important enzymes. It’s the same concept as when you cook vegetables at high heat—the longer you do, the more heat-sensitive nutrients are lost.

LifeSource Bits are manufactured separately at a lower temperature from the rest of the vitamins and antioxidants. This way, your pet can gain as many benefits as pos

Water-soluble vitamins are the most sensitive to heat. Nutritionists estimate that these their potency when exposed to high temperatures, while some, like vitamin C, can lose

BLUE LifeSource Bits contain eight water-soluble vitamins which benefit most from the

- Vitamin B1 (Thiamin)
- Vitamin B2 (Riboflavin)
- Vitamin B12
- Vitamin C
- Folic Acid B9
- Niacin B3
- Biotin B7
- Pantothenic Acid B5

Source: Blue Buffalo website 4/22/2014

33. Similarly, Blue Buffalo makes false and misleading statements that its LifeSource Bits contain certain levels of vitamins, minerals and nutrients to provide specific health benefits such as a “healthy skin and coat” and “healthy bones and tissue,” when in fact, Blue Buffalo’s LifeSource Bits do not contain the requisite levels of vitamins, minerals or nutrients to provide

the health benefits that Blue Buffalo alleges. Blue Buffalo also advertises that certain vitamins, minerals and nutrients alleged to be contained in its LifeSource Bits provide health benefits for which there is no scientific evidence.

Help support a pet's specific life stage requirements.

LifeSource Bits also contain ingredients that can help protect a pet's changing needs from youth through his mature years. These include:

- **Omega 3 and Omega 6 Fatty Acids** for healthy skin and coat
- **Yucca Schidigera Extract** for joint health
- **Taurine** for healthy eyes and heart
- **L-Lysine** for growth and development
- **Vitamin D** for healthy bones and tissue
- **Vitamin B12** for growth
- **L-Carnitine** for endurance and fat metabolism

Source: Blue Buffalo website 4/22/2014

34. Numerous other Blue Buffalo advertising claims relating to the LifeSource Bits in its pet food are false and misleading. For example, Blue Buffalo claims that its LifeSource Bits contain Taurine “for healthy eyes and heart.” The LifeSource Bits, however, contain little or no Taurine. Likewise, Blue Buffalo touts Vitamin D in the LifeSource Bits “for healthy bones and tissue.” But the LifeSource Bits actually have less Vitamin D than the remaining kibble component. Similarly, Blue Buffalo cites L-Carnitine in the LifeSource Bits “for endurance and fat metabolism.” In actuality, there is little or no L-Carnitine in the Blue Buffalo LifeSource Bits. All in all, Blue Buffalo’s LifeSource Bits are falsely advertised as having many qualities and benefits they simply do not have.

“Natural Ingredients”/ “NO Artificial Preservatives”

35. Blue Buffalo has made and is currently making statements and “promises” to consumers that its products contain “Only the Finest Natural Ingredients” and have “NO Artificial Preservatives.”



BLUE uses only the finest natural ingredients and:

- NO chicken (or poultry) by-product meals
- NO artificial flavors, colors, or preservatives
- NO corn, wheat or soy, as they have been linked to allergic reactions in some pets

Source: Blue Buffalo website 4/22/2014



Source: Blue Buffalo website 4/22/2014

What's In Our Food and Why

BLUE foods consist of the finest natural ingredients combined in perfect balance for superior nutrition. These delicious, high-quality ingredients are the foundation of all of our products along with intensively researched vitamins, minerals, and antioxidants – each combination specifically modified for dogs, cats, lifestyles, weight conditions, taste preference, and personal feeding choice.

Like us, dogs and cats require a balanced diet that is a combination of six nutrient classes

- Proteins
- Fats
- Carbohydrates
- Vitamins
- Minerals
- Water

Source: Blue Buffalo website 4/22/2014

36. These statements and promises are repeated throughout Blue Buffalo's website, its national television commercials and other advertising materials. Blue Buffalo's employees also make verbal statements to consumers that Blue Buffalo's products contain "Only the Finest Natural Ingredients" and like statements.

37. Blue Buffalo's statements and promises that its products contain "Only the Finest Natural Ingredients" and have "NO Artificial Preservatives" are false and misleading because, among other things, Blue Buffalo's products contain chicken/poultry by-product meals that include artificial preservatives that are not present in chicken/poultry meal.

"Grain-Free"

38. Blue Buffalo advertises several of its products, including its "Freedom" and "Basics" lines, as being "grain free," often as part of the product name. Blue Buffalo also advertises that all of its products contain "no corn, wheat or soy."

39. Grain-free pet foods are desired by many consumers who believe that dogs and cats should be fed as carnivores because they may not get sufficient nutrients or have difficulty digesting grains. Blue Buffalo attempts to seize upon consumers' beliefs and advocates that not including "grains and glutens" in its products is beneficial because consuming grains and glutens "can cause allergic reactions."

BLUE Freedom®

Free your pet from the grains and glutens that can cause allergic reactions in some dogs with BLUE Freedom. Whether you have a puppy, large breed, small breed or adult dog, we've got a BLUE Freedom recipe for you!

Source: Blue Buffalo website 4/22/2014



Introducing Grain-Free BLUE Freedom®

FOR DOGS

FOR CATS

Some dogs and cats just do better on a diet without grains. That's why there's new BLUE Freedom. BLUE Freedom is made with the finest natural ingredients and none of the grains that contain gluten. It's grain-free at its finest!

Source: Blue Buffalo website 4/22/2014



Basics™ Grain-Free Indoor Turkey & Potato Recipe for Adult Cats

Grain-free BLUE Basics Indoor Turkey Recipe is a limited-ingredient diet formulated to minimize food sensitivities that some cats experience while maximizing the nutritional value they receive. BLUE Basics contains:

- **Turkey** - A high-quality protein not commonly used in cat food.
- **Potatoes and Peas** - Easily digestible carbohydrate sources.
- **A Precise Blend of Veggies, Fruit and Micronutrients** - Selected for their nutritional value and their capacity to help in the digestive process.

Source: Blue Buffalo website 4/22/2014

Why is it so important that there is no corn, wheat or soy in BLUE products?

Corn, wheat and soy have all been identified as potential allergens for some dogs and cats.

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Source: Blue Buffalo website 4/22/2014

40. Blue Buffalo's statements that its products are "grain-free" and contain "no corn, wheat or soy" are, however, false and misleading as testing reveals that Blue Buffalo products indeed do contain these ingredients. Specifically, independent testing commissioned by Purina found grains (rice hulls and/or ground corn) in Blue Buffalo's LifeSource Bits, which are contained in all four Blue Buffalo "grain-free" products. These grains were found in concentrations of up to 3% by weight.

41. By falsely advertising its products as "grain free" when its products actually contain grains, Blue Buffalo is deceiving consumers who intend to purchase grain free products.

"Human-Grade" Pet Food

42. Blue Buffalo makes statements that its products are human-grade and fit for human consumption, and has adopted the slogan "*Love them like family. Feed them like family.*" to convey this message to consumers. (See, e.g., Exhibits C, E).



Source: Blue Buffalo website 4/22/2014

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BLUE

Love them like family.
Feed them like family.®

Why Feed BLUE?

Why BLUE? Product Finder For Dogs For Cats Health & Nutrition Blue Stuff

Why Choose BLUE? BLUE Story Nutrition Philosophy LifeSource Bits FAQ Store Locator Enter Zip Code Go

Why Choose BLUE?

Because only BLUE is made with the unique combination of high-quality, natural ingredients plus exclusive LifeSource® Bits.

We love our dogs and cats like family so we want to feed them with the same care as family. That's why BLUE™ is made with only the finest natural ingredients plus the active nutrients and antioxidants of our exclusive, cold-formed LifeSource® Bits.

The Finest Natural Ingredients for Superior Nutrition

All of our great-tasting, natural and holistic BLUE dog food and BLUE cat food recipes feature:

Our Exclusive LifeSource Bits, Now Enhanced with Super 7 Antioxidants

All BLUE dog and cat dry foods contain LifeSource Bits, a precise blend of vitamins, minerals and antioxidants selected by

Source: Blue Buffalo website 4/22/2014

43. Blue Buffalo's statements that its products are human-grade and/or fit for human consumption are materially false because Blue Buffalo's products contain ingredients such as chicken/poultry by-product meals that are not human grade.

**BLUE BUFFALO'S PRIOR DECEPTIVE PRODUCT
LABELING AND ADVERTISING PRACTICES**

44. In addition to the recent NAD dispute, Blue Buffalo has been no stranger to legal disputes centered on its deceptive advertising practices. In 2008, Blue Buffalo's nutritional boasts were challenged by a competitor before the NAD. That challenge resulted in, among other things, the NAD instructing Blue Buffalo to "discontinue its 'no animal by-products' claims when made in reference to pet foods containing fish meal, lamb meal and/or liver." (*See* NAD Case #4892 at 10-11, decided July 31, 2008, attached hereto as Exhibit G). In response to the NAD's recommendations related to its "no animal by-products" claims, Blue Buffalo has switched to an equally untrue claim that its products "NEVER have Chicken (or Poultry) By-Product Meals."

45. The NAD also recommended that Blue Buffalo discontinue the "*like you feed your family*" portion of its slogan in connection with its non-organic product lines. (*Id.* at 14). Despite submitting voluntarily to the NAD's jurisdiction, Blue Buffalo did not make any material changes to its slogan in response to the NAD's recommendation and continues to deceptively market all of its products using its "Love them like family. Feed them like family." slogan. (*See, e.g., Exhibits C, E*).

46. Rather than revise its advertising to remove deceptive content, Blue Buffalo has actually increased the misleading and deceptive nature of its advertising over the years. It is time for Blue Buffalo's false and deceptive advertising and marketing practices to end.

COUNT I

(False Advertising Under the Lanham Act, 15 U.S.C. § 1125(a))

47. Purina repeats and incorporates herein each and every allegation set forth in paragraphs 1 to 48 of this Complaint.

48. Blue Buffalo on or in connection with goods used in interstate commerce, made and continues to make false statements of fact and false representations of fact as to the nature, characteristics and/or qualities of its goods. Blue Buffalo has also made false statements of fact and representations of fact as to the goods of its competitors.

49. Blue Buffalo's false statements of fact and false representations of fact were made and continue to be made in commercial advertising, product promotions, and on product labels in a manner material to the public's decision to purchase Blue Buffalo's products rather than those of competitors, including Purina.

50. Such acts by Blue Buffalo constitute false statements, descriptions and representations of fact in commercial advertising and product promotion and are a violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

51. As a proximate result of Blue Buffalo's willful conduct, Purina has suffered irreparable harm, including irreparable harm to its reputation and goodwill and the reputation of its products, for which it has no adequate remedy at law, and Purina will continue to suffer irreparable injury unless and until Blue Buffalo ceases making false statements in connection with and to promote its products.

52. Unless Blue Buffalo's activities cease, Blue Buffalo will unjustly profit from sales of its products that are based on consumer reliance on the false statements that it has made and is making about its products. Purina has suffered and will continue to suffer economic harms, including losses in sales as proximately caused by Blue Buffalo's actions.

53. Purina has suffered and will continue to suffer economic harms and injuries to its commercial interests, including losses in sales, which have been and are being proximately caused by Blue Buffalo's actions and misrepresentations.

54. Pursuant to 15 U.S.C. § 1117, Purina is entitled to actual damages to be determined at trial, to have such damages trebled, to disgorgement of Blue Buffalo's profits, and to be reimbursed for the costs of this action and its related attorneys' fees.

COUNT II
(Commercial Disparagement Under the Lanham Act, 15 U.S.C. § 1125(a))

55. Purina repeats and incorporates herein each and every allegation set forth in paragraphs 1 to 56 of this Complaint.

56. Blue Buffalo on or in connection with goods used in interstate commerce, made and continues to make false comparisons of its products as compared to those of competitors, including Purina.

57. Blue Buffalo's false statements of fact and false comparisons were made and continue to be made in commercial advertising, product promotions and on product labels in a manner material to the public's decision to purchase Blue Buffalo's products over those of competitors, including Purina.

58. Such acts by Blue Buffalo constitute false statements, descriptions and representations of fact in commercial advertising and product promotion and are a violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

59. As a proximate result of Blue Buffalo's willful conduct, Purina has suffered irreparable harm, including irreparable harm to its reputation and goodwill and the reputation of its products, for which it has no adequate remedy at law, and Purina will continue to suffer

irreparable injury unless and until Blue Buffalo ceases making false statements and comparisons in connection with and to promote its products pursuant to 15 U.S.C. § 1116.

60. Unless Blue Buffalo's activities cease, Blue Buffalo will unjustly profit from sales of its products that are based on consumer reliance on the false and deceptive comparisons that it has made and is making about its products as compared to those of competitors, including Purina.

61. Purina has suffered and will continue to suffer economic harms and injuries to its commercial interests, including losses in sales, which have been and are being proximately caused by Blue Buffalo's actions and misrepresentations.

62. Pursuant to 15 U.S.C. § 1117, Purina is entitled to actual damages to be determined at trial, to have such damage trebled, to disgorgement of Blue Buffalo's profits and to be reimbursed for the costs of this action and its related attorney's fees.

COUNT III
(Common Law Unfair Competition)

63. Purina repeats and incorporates herein each and every allegation set forth in paragraphs 1 to 64 of this Complaint.

64. Blue Buffalo has engaged in and continues to engage in unfair competition by making false, misleading and deceptive statements about its products while disparaging the products of competitors. Blue Buffalo's misleading and deceptive statements have caused and continue to cause consumers to purchase Blue Buffalo's products over the products of competitors, including Purina.

65. Blue Buffalo acted and continuities to act in bad faith in making claims about its products that it knew and knows to be materially false and deceptive.

66. Blue Buffalo's acts constitute false advertising and unfair competition under the common law of the State of Missouri.

COUNT IV
(Common Law Unjust Enrichment)

67. Purina repeats and incorporates herein each and every allegation set forth in paragraphs 1 to 68 of this Complaint.

68. Blue Buffalo has enjoyed substantial profits from the sale of its products to consumers who purchased Blue Buffalo's products over the products of competitors based on false statements made by Blue Buffalo, including that Blue Buffalo's products do not contain chicken/poultry by-products meals when its products in fact do. These statements made by Blue Buffalo include false comparative statements about the ingredients and nutritional values of Blue Buffalo's product as compared to those of competitors, including Purina.

69. Blue Buffalo would not have made such sales or earned the profits therefrom but for the misrepresentations and false statements that it made and continues to make about its products. On information and belief, Blue Buffalo's profits were further inflated via cost savings for less expensive ingredients than advertised. For example, poultry by-product meal is generally less expensive than the "real meat" that Blue Buffalo references in its advertising.

70. Blue Buffalo's gain from sales of falsely advertised products and disparagement of competitors came at the expense of competitors, including Purina.

71. Blue Buffalo has been unjustly enriched as a result of its false statements and misleading advertising practices, and under principals of equity should not be permitted to retain these unjustly acquired gains.

PRAYER FOR RELIEF

WHEREFORE, Purina prays that the Court enter a judgment against Blue Buffalo:

- (a) Finding that, by the acts complained of above, Blue Buffalo has engaged in false advertising in violation of 15 U.S.C. § 1125(a);
- (b) Finding that, by the acts complained of above, Blue Buffalo has engaged in false advertising in violation of Missouri common law;
- (c) Finding that the acts complained of above were willful;
- (d) Finding that Blue Buffalo has been unjustly enriched as a result of its false advertising and false comparative advertising tactics;
- (e) Enjoining Blue Buffalo, its agents, servants, employees, officers, and all persons in active concern and participation with Blue Buffalo from making false and/or misleading statements about its products, including statements that are likely to lead consumers to believe that its products are free from by-product meals or are of a human-grade quality;
- (f) Enjoining Blue Buffalo, its agents, servants, employees, officers, and all persons in active concern and participation with Blue Buffalo from making false and/or misleading statements about its products as compared to those of competitors, including that its products are more nutritious, free from chicken/poultry by-product meals or are of a human-grade quality;
- (g) Requiring Blue Buffalo to engage in corrective advertising, including advertising that informs consumers that Blue Buffalo's products are not free from by-product meals and are not of a human-grade quality;
- (h) Requiring Blue Buffalo to destroy all product packaging and all other materials displaying false statements, including that its products are free from by-product meals and are of human-grade quality (*e.g.*, the “*Feed them like family.*” slogan);

- (i) Declaring that this is an “exceptional case” due to the willful nature of Blue Buffalo’s conduct;
- (j) Ordering Blue Buffalo to account to Purina for all gains, profits, savings and advantages obtained by Blue Buffalo as a result of its false advertising and unfair competition and disgorge to Purina restitution in the amount of such gains, profits, savings and advantages;
- (k) Ordering Defendant to pay Purina:
 - i. Treble actual damages, costs and reasonable attorneys’ fees pursuant to 15 U.S.C. § 1117;
 - ii. Blue Buffalo’s profits and cost savings from sale of its products resulting from its false advertising practices; and
 - iii. Pre-judgment and post-judgment interest.
- (l) Awarding Purina such other and further relief as this Court may deem just and proper.

JURY DEMAND

Purina hereby demands a trial by jury.

Dated: May 6, 2014

Respectfully submitted,

NESTLÉ PURINA PETCARE COMPANY

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